

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

JEROME MENDELL HAILEY,

Plaintiff,

v.

LLOYD BLACKMAN,

Defendant.

Case No. 1:18-cv-464

HONORABLE PAUL L. MALONEY

OPINION AND ORDER

This is a prisoner civil rights action filed pursuant to 42 U.S.C. § 1983. Defendant filed a motion to dismiss the complaint for insufficient service of process pursuant to Fed. R. Civ. P. 12(b)(5). The matter was referred to the Magistrate Judge, who issued a Report and Recommendation (R & R), recommending the motion to dismiss be construed as a motion to quash and be granted, and that the summons served on defendant be quashed. After the issuance of the R & R, Plaintiff filed a response stating he cannot complete service of process because he was not sent a copy of the summons and complaint with the R & R, and requested these documents be sent to him (ECF No. 48).

In accordance with 28 U.S.C. § 636(b)(1) and Fed. R. Civ. P. 72(b)(3), the Court has performed de novo consideration of those portions of the Report and Recommendation to which objections have been made. To the extent that Plaintiff's response (ECF No. 48) is an objection to the R&R, the objection is OVERRULED and this Opinion and Order issues. Accordingly,

IT IS HEREBY ORDERED that the Report and Recommendation of the Magistrate Judge (ECF No. 47) is APPROVED and ADOPTED as the Opinion of the Court.

IT IS FURTHER ORDERED that the motion to dismiss brought pursuant to Fed. R. Civ. P. 12(b)(5) is construed as a motion to quash (ECF No. 37) and is GRANTED.

IT IS FURTHER ORDERED that Plaintiff's summons served on Defendant is QUASHED.

IT IS FURTHER ORDERED that the Case Management Order (ECF No. 32) is VACATED.

IT IS FURTHER ORDERED that Plaintiff has until **April 30, 2020** to properly serve the complaint. The Clerk shall issue a summons for Defendant and send the summons to Plaintiff with a copy of this order and one copy of the amended complaint (ECF No. 19). Because Plaintiff is not proceeding *in forma pauperis* in this action, he is responsible for service of the summons and complaint upon Defendant. *See* Fed. R. Civ. P. 4.

IT IS FURTHER ORDERED that, until so ordered by the Court, Defendant is not required to file an answer or motion in response to the complaint, and no default will be entered for failure to do so. *See* 42 U.S.C. § 1997e(g)(1). After Plaintiff has filed proof of service of the summons and complaint upon Defendant, proceedings in this case will be governed by the Court's Standard Case Management Order in a Prisoner Civil Rights Case.

Dated: March 16, 2020

/s/ Paul L. Maloney
Paul L. Maloney
United States District Judge